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January 15, 2001

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative.
600 17th Street, N.W.
Washington, D.C. 20508

Re: Response in Connection with Inv. No. TA-201-73 (Certain Steel Products)

Dear Madam Secretary:

On behalf of the Association of Specialty Cold Rolled Strip Producers of Germany, Austria and Sweden ("SAGA"), enclosed please find a response to comments regarding the actions that the President should take in connection with the above-referenced investigation. These comments are filed pursuant to the United States Trade Representative's October 26, 2001 Notice in the Federal Register (66 Fed. Reg. 54321) and December 28, 2001 Notice in the Federal Register (66 Fed. Reg. 67349). Please do not hesitate to contact us if you have any questions regarding this submission

Respectfully submitted,
BARNES, RICHARDSON & COLBURN

By: Gunter von Conrad
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Counsel to SAGA

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**BEFORE THE
TRADE POLICY STAFF COMMITTEE
OFFICE OF THE
UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT**

In the Matter of Review of the)
Investigation of)
Certain Steel Products)
_____)

Investigation No. TA-201-73

**RESPONSE
of
THE ASSOCIATION OF SPECIALTY COLD ROLLED STRIP PRODUCERS OF
GERMANY, AUSTRIA AND SWEDEN**

EXECUTIVE SUMMARY

SAGA supports and endorses the comments submitted on behalf of the European Confederation of Iron and Steel Industries, in that trade restrictive import relief is not appropriate to address the problems experienced by the U.S. steel industries, especially with regard to imports from the European Community. However, if the President concludes that trade restrictive measures should be imposed, SAGA contends that certain specialty products must be excluded from that remedy. In making its exclusion determinations, the Administration must not give the domestic industry veto power over exclusion requests.

Also, if trade restrictive remedies are imposed, SAGA urges that they be in the form of a non-prohibitive, low percentage tariff rate quota with a value break to leave high valued products unaffected, and established in such a manner as to assure that small and mid size suppliers will be able to provide historic quantities over the course of an administrative year. Such a value-break mechanism would take account of the fact that various high priced specialty products could not have been contributing to any injury

suffered by the domestic industry and should not be subject to import relief. Finally, SAGA urges that a short supply mechanism is needed by U.S. manufacturers who must rely on SAGA's products to ensure that U.S. steel purchasers can obtain the types and qualities of steel they need to remain competitive in the global marketplace.

I. OVERVIEW

These comments on the actions that the President should take in the above-referenced investigation are filed pursuant to leave granted by the Office of the United States Trade Representative ("USTR") set forth in the Federal Registers of October 26, 2001 and December 28, 2001 on behalf of the Association of Specialty Cold Rolled Strip Producers of Germany, Austria and Sweden ("SAGA"). SAGA contends that any action taken by the President with regard to flat products must exclude a variety of specialty flat products which are not produced in the United States, are not made in sufficient quantity in the United States to satisfy domestic demand, or are not made in the United States to the specifications needed by domestic consumers. In making its exclusion determinations, the Administration must not give the domestic industry veto power over exclusion requests.

In the present case, the Commissioners have recommended either an increased tariff of up to 40 percent or a quota. The imposition of such strict import relief on specialty products which are not available from domestic sources, not available in sufficient quantities to satisfy demand, or not available in required qualities, would cause substantial harm to U.S. consumers of steel products. Any safeguard relief which included such products would be excessive and would cause substantial economic harm to U.S. purchasers, consumers, and workers without providing any benefit to domestic

producers. A list of the products for which exclusion is sought is included in Attachment 1. Additional information including a public description, HTSUS numbers, and support letters were previously been submitted to USTR. Additional copies of that submission are available upon request.

SAGA supports and endorses the comments submitted on behalf of the European Confederation of Iron and Steel Industries, in that trade restrictive import relief is not appropriate to address the problems experienced by the U.S. steel industries, especially with regard to imports from the European Community. Most imports from Europe, and certainly all of the specialty products addressed herein, did not contribute to any problems of the industry, and there are numerous remedial orders in affect covering all categories of steel product. However, if the President concludes that trade restrictive measures must be imposed, SAGA urges that they be in the form of a non-prohibitive, low percentage tariff rate quota with a value break to leave high valued products unaffected, and established in such a manner as to assure that small and mid size suppliers will be able to provide historic quantities over the course of an administrative year. Such a value-break mechanism would take account of the fact that various high priced specialty products could not have been contributing to any injury suffered by the domestic industry and should not be subject to import relief. Finally, SAGA urges the use of a sole supply mechanism to ensure that U.S. steel purchasers can obtain the types of qualities of steel that they need to remain competitive in the global marketplace.

II. SAGA PRODUCTS SHOULD BE EXCLUDED FROM ANY TRADE RESTRICTIONS

A. Products for Which There Has Been No Objection

SAGA would note that in its January 11, 2001 submission, the Association of Cold Rolled Strip Producers (ACRSP) did not object to the following SAGA exclusion requests:

- **Texture Rolled Steel Strip for Retractor Springs (SORBITEX)**
- **Cold rolled texture strip steel for retractor springs**
- **Bonderband**
- **Finally Annealed Electrical Steel Strip**
- **Cold Rolled Steel Strip of 2 percent Nickel, T5 Tolerances and an ra less than 8 my**

SAGA would also note that in their post-hearing brief on remedy submitted to the USITC on November 13, 2001, ACRSP stated that they did not oppose the exclusion of “ski edge profile” cold rolled steel.¹ In their December 5, 2001 submission to USTR, however, ACRSP changed its position, without explanation, and stated that the description of the product was too vague and that there was “likelihood” that members of the Association, such as Gibraltar Steel, produce or can produce this product. ACRSP offers no explanation as to why it has now changed its position with regard to this product given that there was apparently enough information for them to decide not to oppose this product in their previous submission. SAGA contends that the Administration must

¹ See post-hearing brief of Adduci, Mastriani & Schaumberg, November 13, 2001, fn at p. 5. . For further information on this product, please see the November 13, 2001 submission of SAGA to USTR. This product is number 31 on SAGA’s list .

exclude this product based on the fact that it is not made in the United States and the objections of the domestic industry have been vague and inconsistent.

B. Other SAGA Exclusion Requests Must Also be Granted

1) The Domestic Industry Must Not Have A Veto Over Exclusion Requests

Neither the USITC nor the Administration has offered any criteria based upon which it would determine whether exclusion requests must be granted. Rather, the government seems to be deferring to the domestic industry's wishes when making such determinations. SAGA does not agree that the domestic industry should have a veto over exclusion requests. As this case was initiated by USTR and not by private petition, USTR must decide the appropriate scope of this investigation, not private parties. Relying on the unsubstantiated statements of the domestic industry to deny exclusion requests is a violation of the statute and the WTO Agreement.

In their submission, the ACRSP simply states, with regard to a variety of SAGA products, that there is "likelihood" that various members produce or "can produce" the products. SAGA does not accept the arguments of domestic producers that exclusion requests should be denied because they allegedly "can" produce the steel in question. Nor should the Administration rely on claims that the domestic industry will make such steel if the price is right or if U.S. purchasers buy sufficient quantities. Where members of the domestic industry have merely provided unsubstantiated claims that they "can" make the product the product at issue, these claims must not serve as a basis for denying an exclusion request. Any promises by the domestic industry to make such products in the future cannot be considered as a basis to deny an exclusion request. Section 201 investigations involve fair trade. Only in unfair trade cases does the statute explicitly

provide for a cause of action based on cases where “the establishment of an industry in the United States is materially retarded by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,...”² By contrast, in fair trade cases, the statute does not provide for a cause of action based on retardation of U.S. industry development on account of imports. Under the law and precedent of the Commission, the issue is whether the Petitioners are currently producing the product at issue. The domestic industry must be able to show actual current production rather than stating that they “can” or “plan to” produce the product in question.

The domestic industry must be required to show that they do make the product; that they have qualified to make the product; that they have experience in making the product; and that they could supply it immediately should import restrictions be imposed. To date, SAGA is unaware of any submissions by the domestic industry providing documentary evidence that they make SAGA products. To SAGA’s knowledge no domestic producer has submitted records evidencing the sale of such products or evidencing an offer to sell such products, nor have they provided information showing their technical ability to produce such products.

In determining whether to grant an exclusion, the Administration must consider all relevant factors and not simply rely on the unsubstantiated claims of the domestic industry. The current short supply regulations (19 CFR Part 357) provide some of the criteria that need to be considered when granting or denying exclusion requests. The

² 19 U.S.C. §1673(2)(B).

regulations currently provide that, the Secretary will not consider one factor alone to be dispositive, but will consider all relevant factors, including:

1. The recent levels of capacity utilization for domestic facilities producing the product or product sector;
2. The quantity of additional imports of the product requested by the petitioner and the ability of domestic producers to supply the product in such quantity;
3. The willingness of the producers of the product to supply the product at a price that is not an aberration from prevailing domestic market prices;
4. Reasonable specifications requested by the purchaser or any end user, such as metallurgical, dimensional, quality, service requirements, and supply only by a qualified supplier if such qualification is required by the purchaser's customers, and
5. Delivery times to the purchaser and to end users of the product.

Failure to consider such factors could result in the inclusion in the remedy of products not made in the United States or not made in sufficient qualities or quantities. Such a remedy would exceed the amount necessary to prevent or remedy the serious injury.³ This limitation on the President's power in crafting a remedy is contained in the statute and is reflective of the WTO Agreement on Safeguards, which explicitly provides that a member may "apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment."⁴

2) The President Must Consider the Effects of Any Remedy on U.S. consumers and U.S. Competition

It is the President's duty in crafting a remedy to take into account the short- and long-term economic and social costs of the actions...relative to their short- and long-term economic and social benefits....⁵ The President must also consider the "effect of the implementation of actions under this section on consumers and on competition in

³ 19 U.S.C. § 2253(e)(2).

⁴ Agreement on Safeguards, Article 4(1).

⁵ 19 U.S.C. §2253(a)(1)(E).

domestic markets for articles.”⁶ U.S. purchasers have submitted documentation in support of various exclusions stating that they cannot obtain these products from domestic sources or cannot obtain them in the qualities required or in sufficient quantity. In resolving the factual question of what domestic producers do make, the President should give more weight to the experience of U.S. steel purchasers rather than to the unsubstantiated claims of the domestic industry.

The Administration must also consider the extent of domestic production. With regard to its responses to a variety of SAGA exclusion requests, the ASCRP has identified only one or a few possible U.S. producers. In the cases of strip steel for doctor blades, open coil annealed strip for steel rules and die steel, steel rules, blank band, crystal saw & slurry blade steel for semiconductor industries, and trimetal strip steel, the ASCRP only identifies one potential U.S. producer. While SAGA does not agree that ASCRP members are making these products, even assuming this claim to be true, the inclusion of such products in any remedy would adversely effect the state of competition in the domestic market, by forcing consumers of such specialty steel to rely on one source of supply. SAGA would also note that ASCRP in its previous submissions to USITC admitted that they could not supply enough “wood band saw steel” or “crystal and slurry blade steel” to satisfy the needs of U.S. consumers of the products.⁷ In their submissions to the Commission, the members of the Association of Cold Rolled Strip Steel Producers only claimed that they could supply a “significant portion” of domestic needs for these products. While SAGA does not agree that these domestic producers are manufacturing

⁶ 19 U.S.C. §2253(2)(F)(ii).

⁷ For further information on SAGA exclusion requests for these products, please see the submission of Barnes, Richardson & Colburn to USTR on November 13, 2001.

the same product as SAGA members, even assuming their claims to be true, the imposition of import relief in such cases would only serve to create an artificial shortage of such products in the domestic market. The imposition of safeguard relief on such products would unnecessarily limit competition in the domestic market to the detriment of U.S. purchasers and their manufacturing operations.

3) SAGA's Exclusion Requests Must be Granted

All of the products for which SAGA has requested exclusion are specialty products which are not produced in the United States or are not produced in sufficient quantities or qualities. Consideration of the appropriate factors, rather than reliance on a domestic industry veto, would lead to the conclusion that all of these exclusion requests must be granted.

SAGA also notes that USTR has already excluded certain bandsaw, flapper valve and doctor blade steel products from the scope of this case. The additional bandsaw, flapper valve and doctor blade steel exclusions requested by SAGA are merely variants of those products. In addition, USTR should review the submission of Sandvick Steel of January 4, 2002 in support of its own exclusion requests. Sandvick and its customers provide further evidence that the domestic industry does not produce these products and does not produce steel for shock absorber valves nor die steel.

In addition, Theis Precision Steel, a member of the domestic industry, in its own exclusion requests submissions has admitted that U.S. steel producers cannot supply the prematerial necessary to produce many of the products for which exclusion has been requested.⁸

III ANY TRADE RESTRICTIVE REMEDIES MUST BE MINIMAL

Also, if trade restrictive remedies are imposed, SAGA urges that they be in the form of a non-prohibitive, low percentage tariff rate quota with a value break to leave high valued products unaffected, and established in such a manner as to assure that small and mid size suppliers will be able to provide historic quantities over the course of an administrative year. Such a value-break mechanism would take account of the fact that various high priced specialty products could not have been contributing to any injury suffered by the domestic industry and must not be subject to import relief.

The use of value differentials to safeguard both sensitive domestic industries and international trading rights of foreign suppliers which are both needed and demonstrably without detrimental effect on the United States producers, has been recognized in all international trade negotiations since the Havana Charter in the Harmonized Tariff System of the United States and its tariff statute predecessors for generations.^{9 10} The application of a value-break offers a practical means of tailoring a remedy to fit the dual requirements of remedial restraint, if any, and the assurance of non-excessive remedy construction. In the present case, the use of a remedy encompassing all flat-rolled products would not do justice to products in specialty applications, not available in the United States, or in short supply. An important option would be make trade restrictions

⁸ See submission of Theis Precision Steel to USTR, December 21, 2001.

⁹ The most instructive example thereof can be seen in the HTSUS Chapter 69 (Subchapters 6911 and 6912 relating to ceramic tableware) where amendments to the Tariff Act of 1930, have been enshrined into U.S. law, establishing a whole system of value-breaks for such dual safeguard purposes.

¹⁰ The value-break concept has also been employed by the Commission in Nonrubber Footwear, Inv. # TA-201-55 (USITC Pub. 1717, July 1985) to distinguish products subject to quota and products not under quota. In Nonrubber Footwear, the Commission applied a quota remedy above the value-break to protect high-value domestic products of concern in that case. In the present case, it is the low-value imports which are of concern to the domestic industry. Therefore, here, any remedy should be applied to values below the value break. The principle, however, is the same: to allow a remedial mechanism by a value break.

inapplicable above certain import prices. For instance, the President may rely on a value break based on imports priced above the average domestic price for the general product category. Such imports could not have been contributing to the serious injury suffered by the domestic industry and must not be included within any remedy.

IV. A WORKABLE SHORT SUPPLY MECHANISM MUST BE EMPLOYED

SAGA does not believe that a short supply mechanism should substitute for exclusions. USTR and the Commission have already spent considerable time considering exclusion requests and this is an important commitment to ensure that products are not needlessly subject to safeguard relief. However, the establishment of a short supply mechanism will ensure that products which are not produced in the United States or are not produced in the quantities or qualities needed by domestic purchasers are not mistakenly subject to safeguard relief. A short-supply mechanism will give U.S. purchasers an opportunity to have products removed from 201 relief when they are not produced by the domestic industry or cannot be produced in the required quantities or qualities.

Such a short supply mechanism must be established along certain broad principles: 1) in order to ensure speedy disposition of application, any application must be deemed approved if not expressly denied within a limited time period; 2) the burden should be placed on the opponents of a short supply application to provide clear and convincing evidence of actual and adequate domestic supply by more than one domestic producer. The mechanism must also take account of other factors such as whether the domestic industry can supply the product in the required quantities; whether the domestic industry's products meet the specifications required by the purchaser; whether the

domestic industry is qualified to produce the product, where qualification is necessary; whether the domestic industry can supply the product in a reasonable time given the circumstances of the individual case; whether the domestic industry can supply the product at prevailing prices.

A short supply mechanism established along these line will ensure that domestic steel purchasers have access to the steel they need, and which they cannot obtain from the domestic steel industry, in order to remain competitive in the global marketplace.

V. CONCLUSION

SAGA supports and endorses the comments submitted on behalf of the European Confederation of Iron and Steel Industries, in that trade restrictive import relief is not appropriate to address the problems experienced by the U.S. steel industries, especially with regard to imports from the European Community.

However, if the Administration does impose trade restrictive remedies, SAGA's exclusion requests must be granted. SAGA also contends that a tariff rate quota with a value-break and short supply mechanism would be appropriate mechanisms to ensure that safeguard relief is not needlessly imposed on products which are not made in the United States or are not made in sufficient quantities or qualities to satisfy domestic demand.

Respectfully submitted,

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Date: January 15, 2001

Counsel for SAGA

EXCLUSION LIST INDEX

- 1. Special Precision Strip Steel for Doctor Blades for Coating of Paper or for use in the Printing Industry**
- 2. Cold rolled and hardened and tempered strip steel for coater blades**
- 3. Coater Blade Steel**
- 4. Doctor Blade Steel for rotogravure and offset printing**
- 5. Cold rolled and hardened and tempered strip steel for shock absorber plates**
- 6. Shock Absorber Valve Steel for the automotive industry**
- 7. Product 1095 ra greater than or equal to 8, width 24.5".**
- 8. Wood Band Saw Steel**
- 9. Cold rolled and hardened and tempered strip steel for band saws**
- 10. Cold rolled and hardened and tempered strip steel for chain saws**
- 11. Cold rolled and hardened and tempered strip steel for circular saws**
- 12. Product C 125 pin point**
- 13. Cold rolled and hardened and tempered strip steel for die rules and cutting rules**
- 14. Open coil annealed strip (OCA) 1050/1065/1075 - steel rules and die steel**
- 15. Valve Steel**
- 16. Flapper Valve Steel**
- 17. Scalpel and Razor Blade Steel**
- 18. Steel Rules**
- 19. Rule Die Steel**
- 20. Bi-Metal Strip**

- 21. Bimetal Strip Steel for the manufacturing of different kinds of heavy duty saws and power saw tool components**
- 22. Bimetal Steel Strips for Textile Machine Parts**
- 23. Texture Rolled Steel Strip (SORBITEX)**
- 24. Cold rolled strip steel for industrial blades**
- 25. Cold rolled and hardened and tempered strip steel for springs**
- 26. Cold rolled strip steel for trowels - hardened and tempered**
- 27. Cold rolled texture strip steel for retracting springs**
- 28. Cold rolled strip steel for measuring tapes**
- 29. Certain Alloyed Clutch Spring Steel**
- 30. Certain Alloyed Clutch Spring Steel**
- 31. Ski Edge Profile**
- 32. High Carbon Deep Drawing Steel Alloyed**
- 33. Finally Annealed Electrical Steel Strip**
- 34. Certain Lapping Carrier Steel**
- 35. Certain Lapping Carrier Steel**
- 36. High Precision Spring Steels**
- 37. Feeler Gauge Steel**
- 38. Reed Steel**
- 39. Bonderband**
- 40. Blank band**
- 41. Product 1075 T5 Tol. And better, 24.5 inch width**
- 42. Product 1095 T5 Tol. And better 24.5 inch width**
- 43. Certain cold-rolled hardened and tempered strip steel**

- 44. Cold Rolled Steel Strip - SAE 1074 modified**
- 45. Cold Rolled Steel Strip - SAE 1065 modified**
- 46. Cold Rolled Steel Strip - SAE 1045 modified**
- 47. Cold Rolled Steel Strip - SAE 1006 modified**
- 48. Cold Rolled Steel Strip - SAE 1008 modified**
- 49. Crystal saws and surry blade steel for semiconductor industries**
- 50. Steel for textile machine parts**
- 51. Crepping Blade Steel**
- 52. Trimetal Strip Steel**
- 53. Band Knife Steel**
- 54. Flat Wire**
- 55. Cold Rolled Steel Strip to SAE 4130**
- 56. Cold Rolled Steel Strip for Production of Scrapers and Similar Hardware**
- 57. 2% Nickel T5 Tolerances and ra less than 8 my**